



Montana Legislative Services Division  
Legal Services Office

SENATE JUDICIARY

EXHIBIT NO. 13  
DATE 1/12/11  
BILL NO. SB106

PO BOX 201708  
Helena, MT 59620-1708  
(406) 444-3064  
FAX (406) 444-3036

January 7, 2011

Senator Carol Williams  
Montana State Capitol, Room 313

Re: Legal opinion -- legislature directing attorney general actions

Dear Senator Williams:

I am writing in response to your request for a legal opinion on whether the legislature may direct the attorney general to undertake specific actions during litigation. My conclusion, the basis for which is discussed briefly below, is that the legislature may not direct the attorney general to undertake specific actions during litigation.

The Montana attorney general is a constitutional officer under Article VI, section 1, of the Montana Constitution. This section provides that the attorney general's duties are based on two sources: "this constitution and by law." Pursuant to Article VI, section 4(4), of the Montana Constitution, "The attorney general is the legal officer of the state and shall have the duties and powers provided by law."

The Montana Constitution also provides for a separation of powers into three branches of government in Article III, section 1.

The power of the government of this state is divided into three distinct branches--legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

In my opinion, an attempt by the legislature to direct the attorney general, as chief legal officer of the state, to undertake specific actions during litigation would pose a significant risk of violating Article III, section 1, of the Montana Constitution.

Please let me know if I can provide any additional information or analysis about this issue.

Sincerely,

Robert Stutz  
Chief Legal Counsel  
Montana Legislative Branch